IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

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J U D G M E N T

Kishan Vs. State of Raj.

D.B.CR.APPEAL NO. 239/2001 AGAINST THE JUDGMENT DT. 12.12.2000 PASSED BY LEARNED SESSIONS JUDGE, JAIPUR CITY, JAIPUR IN SESSIONS CASE NO. 99/99 .

Date of Order : January 19 , 2006.

P R E S E N T

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Satyapal Poshwal, Amicus Curiae, for the appellant.
Mr. Brahmanand Sandhu, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE KOTHARI,J.)

Ratan, Prahlad and Shrawan, three villagers living in village Bhambhori, who used to do their live stock like goats and Sheep grazing work, on 28.4.99 were coming back to home in the evening. When Srikishan, who is also said to be accompanying them and who is their relative and unfortunately suffering from mental disease suddenly snatched a Kulhari from Shrawan and caused injuries to Shrawan and Ratan both without any provocation, and as a result of said injuries, his brother-in-law Ratan

succumbed to such injuries and died on 28.4.99, on his way to the hospital.

2. Upon a Parcha Bayan of Shrawan given to Police Station-Kalwad, Distt. Jaipur camp at Sawai Mansingh Hospital, Jaipur wherein said Shrawan was admitted for treatment of his injuries, reported that he lives in village Bhambhori where his father-in-law Nand Ram and co-brother Srikishan, the appellant before us, also live. On 28.4.99, when he (Shrawan), Prahlad, Ratan, Srikishan and one Anchi had gone taking their goats and sheep for grazing and when they were returning in the evening at about 6.00 PM, he was going little bit ahead and in the back side were remaining 4 persons coming and Srikishan had one Kharwadia, a sort of sickle in his hands. He suddenly hit on the neck of Ratan S/o Nanda Ram on the back side. The said Ratan tried to run away, but he fell down after few steps. When Ratan fell down, the said appellant Srikishan also hit Shrawan on head and right hand with the same weapon. On hearing hue and cry, one person from nearby Dhani came and caught hold of Srikishan. Then they took a jeep for Ratan and his treatement for going to Jaipur, when on the way Ratan succumbed to his injury and died and Ratan was his brother-in-law and accused Srikishan was his co-brother

(Sadu). In the said Parcha Bayan, Shrawan also stated that for last 2-4 days, Srikishan suddenly lost his mental balance and he suddenly used to run away from home where they used to catch hold him and bring him back. When they all were coming in the said jeep for Jaipur, accused Srikishan was not there as he had run away.

3. The learned Sessions Judge, Jaipur District, Jaipur held the trial in sessions case no. 99/99 against the accused Srikishan @ Kishan S/o Chandra Ram, aged 31 years, by caste Gurjar where the prosecution has produced as many as 11 prosecution witnesses and 14 prosecution documents; whereas the defence produced 3 defence witnesses including the injured Shrawan and eye witness Anchi. The formal FIR of the said incident was recorded by the concerned police station on 29.4.99 at 3.30 PM. The post mortem report Ex.P.10 shows only one injury on the body of deceased Ratan:

> **"Incised wound 5 cm x 3 cm size vertibra and spinal cord deep put Rt side back of neck with clear cut margins. Underlying tissues are also clear cut. Clotted blood put in and around the wound. Further dissection shows cutting of muscles, blood vessels, nerves, tissues and really the**

wound upto vertibra. The 3rd & 4th vertibra are cut almost completely. Only 1/4th portion of Lt lateral part intact. Spinal cord.... clearly cut with haemotoma portion . Large amount of haemotoma darkened but in many sweng cervical vertibrse. (illegible) before death."

4. PW-1 Shrawan, stated before the court that on the date of incident at about 6.00 PM, he and Ratan were going back to village with their goats and accused Kishan was coming on their back side. He had "Kulhari" in his hands and he inflicted injuries on the neck of Ratan and thereafter he also hit PW-1 Shrawan with the same kulhari on his hand also and thereafter the accused ran away. In his cross-examination, he stated that only he had the Kulhari in his hand and Kishan snatched Kulhari from him and inflicted injuries. He also stated that Kishan was sick for last many days and that he had run away from home on that day morning also, but they had caught hold of him. He denied the suggestion that they had a fight with accused Kishan and on account of such fight, he had inflicted any injury with his Kulhari on the accused Kishan. He further admitted in his cross-examination that on account of injury caused on his head, he had become unconscious and he does not remember who has taken him

into the hospital.

5. PW-2 Anchi supported the prosecution case that accused Kishan had snatched Tachiya "Kulhari" from Shrawan and had inflicted injuries on her brother Ratan and Jijaji Shrawan both. He also threw the Kulhari towards her, but she ran away and saved herself. In her cross, she has stated that accused Kishan was also Jija and was ill for last many years and he used to take medicines. She denied about any incident of fight between accused Kishan and Ratan or Shrawan. Likewise PW-3 Prahlad also supported the version of said incident.

6. PW-4 Mali Ram, Investigation Officer of the case deposed before the court that upon receiving the information that on 29.4.99 in a fight resulting in death of one person in village Bhambhori and other person having suffered injuries were brought to SMS Hospital, Jaipur. He went to SMS Hospital, Jaipur and recorded the Parcha Bayan Ex.P-1.

7. PW-7 Sheo Ram, the other brother of Ratan and Anchi also supported the prosecution story and he said that he was informed about the said incident by Anchi. He also stated in his cross-examination that accused Kishan was

sick for last six months to one year. However he had not seen accused Kishan running away from home or having fits.

8. Thus though from the post mortem report, the injury quoted above on the body of deceased Ratan, it is clear that death of Ratan was homicidal in nature and presence of accused and his inflicting the said injuries on deceased Ratan, cannot be doubted and prosecution has succeeded in establishing the same, but it appears that the said accused cannot be said to have had intention to kill his own brother-in-law Ratan as the said inflicted injury appears to have been caused by him without any provocation or fight and there is no other motive also attributed to the said accused for inflicting the said injury on the neck of deceased Ratan. The said accused is also said to be suffering from some sort of mental disease and appears to have caused the said injury out of fit of sudden unexplained anger without any pre-meditation or provocation, therefore, we are of the view that the case of the appellant would fall within the Exception 4 of Sec.300 which says that " Culpable homicide is not murder if it is committed without premedication in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having

taken undue advantage or acted in a cruel or unusual manner." We also find that accused had inflicted only one injury without any premedication on the neck of deceased Ratan which unfortunately proved to be fatal, but without establishing the intention of the accused to have caused such injury both with knowledge and intention to kill the deceased, we are of the view that the case would fall in said Exception 4 of Sec. 300 IPC.

9. For these reasons, we partly allow the appeal of appellant and instead of Section 302, we convict him under Section 304 part II IPC. In view of the fact that appellant is in jail continuously from April 30,1999, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however acquit him of the charge under Section 323 IPC. Appellant Kishan, who is in jail, shall be set at liberty forthwith if not required to be detained in any other case.

10. The impugned judgment of trial court stands modified as indicated above.

(DR.VINEET KOTHARI)J. (SHIV KUMAR SHAMAR),J.

s.rawat/-